

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

JAN 08 2021

JULIA C. DUDLEY, CLERK
BY:
DEPUTY CLERK

UNITED STATES OF AMERICA)

VERSUS)

CASE NO. 7:17CR00056

MONTA ORLANDO JORDAN)

MOTION FOR LEAVE TO FILE A RULE 33 MOTION
FOR NEW TRIAL BASED ON PROSECUTORIAL MISCONDUCT

COMES NOW THE DEFENDANT MONTA ORLANDO JORDAN, HEREBY MOTIONS THIS HONORABLE COURT FOR LEAVE TO FILE A MOTION FOR NEW TRIAL BASED ON PROSECUTORIAL MISCONDUCT. DEFENDANT AVERS THE PROSECUTOR'S ACTIONS REGARDING THE AUGUST 10, 2017 AMANY RAYA INTERVIEW WAS ONE OF BAD FAITH AND AMOUNTED TO MISCONDUCT REQUIRING A NEW TRIAL. IN SUPPORT OF THIS ARGUMENT DEFENDANT AVERS THE FOLLOWING;

ARGUMENT

RULE 33 STATES THAT "THE COURT MAY VACATE ANY JUDGMENT AND GRANT A NEW TRIAL IF THE INTEREST OF JUSTICE SO REQUIRES." U.S. V ROBINSON 627 F.3d 941,948 (4th CIR 2010). TO SUCCEED ON A CLAIM OF PROSECUTORIAL MISCONDUCT, A DEFENDANT MUST PROVE THAT 1) THE PROSECUTION ENGAGED IN IMPROPER CONDUCT AND

2) SUCH CONDUCT MUST HAVE PREJUDICIALLY AFFECTED THE DEFENDANT'S RIGHT SO AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL. SEE U.S. v GOLDING 168 F.3d 700, 702 (4th CIR 1999), U.S. v ALERRE 430 F.3d 681, 689 (4th CIR 2005) AND U.S. v ALLEN 491 F.3d 178, 191 (4th CIR 2007). A DECISION WHETHER TO REOPEN A CRIMINAL CASE IS COMMITTED IN THE FIRST INSTANCE TO THE SOUND DISCRETION OF THE TRIAL COURT, U.S. v WILLIAMSON 852 F.2d 566 (4th CIR 1988).

IN THE CASE AT BAR DEFENDANT HAS CONSISTENTLY ALLEGED THAT INVESTIGATORS INVOLVED IN HIS PERPETRATED A POLICE BURGLARY OF HIS HOME ON MARCH 6, 2017 AND THAT THIS EVENT LED TO DAMAGING EVIDENCE THAT WAS PRESENTED AT TRIAL. FOR INSTANCE THE BURGLARY LED TO LAW ENFORCEMENT BECOMING AWARE OF AND OBTAINING DAMAGING EVIDENCE FROM CHELSEA FRY, A GOVERNMENT WITNESS WHO TESTIFIED AT TRIAL.

FOR ITS PART, THE GOVERNMENT HAS ADAMANTLY ARGUED THAT DEFENDANT'S CLAIM OF A POLICE BURGLARY WAS UNSUBSTANTIATED. 1) THE PROSECUTORS IN THIS CASE MOTIONED THIS COURT TO SEAL DEFENDANT'S MAY 30, 2019 LETTER ALLEGING A POLICE BURGLARY, 2) IN A CIVIL MATTER AUSA MUNRO ARGUED ON BEHALF OF THE UNITED STATES THAT DEFENDANT'S CLAIM OF A POLICE BURGLARY WERE UNSUBSTANTIATED, SEE JORDAN v FLIPPIN ET AL 7:19CV214-c p.5 OF 9 (W.D. VA MARCH 6, 2020), 3) THE PROSECUTORS IN THIS CASE ARGUED IN ITS JANUARY 2020 MOTION IN LIMINE THAT DEFENDANT'S CLAIM OF A POLICE BURGLARY WERE UNSUBSTANTIATED AND 4) AFTER DEFENDANT'S FEBRUARY 18, 2020 TESTIMONY, THE COURT INQUIRED IF

THERE WAS ANY EVIDENCE SUBSTANTIATING THE BURGLARY OF DEFENDANTS' HOME TO WHICH THE PROSECUTORS ADAMANTLY DENIED THERE WAS ANY CORROBORATING EVIDENCE. THE PROSECUTORS MADE THESE REPRESENTATIONS ALTHOUGH THEY WERE IN POSSESSION OF THE AUGUST 10, 2017 AMANY RAYA DEA INTERVIEW WHERE SHE ACCUSES LAW ENFORCEMENT OF BREAKING INTO AND BURGLARIZING DEFENDANTS' HOME, SPECIFICALLY IDENTIFYING DETECTIVE FLIPPIN.

CONCLUSION

THE PROSECUTORS' LACK OF CANDOR RESULTED IN THIS COURT'S ADVERSE PRE-TRIAL DECISIONS WHICH ULTIMATELY IMPACTED DEFENDANTS' DEFENSE. IT ALSO SPARED THE GOVERNMENT'S CASE AGENTS OF HAVING TO ANSWER DAMAGING QUESTIONS AT TRIAL OR EVEN FACING POSSIBLE CRIMINAL CHARGES. THE PROSECUTORS' CONDUCT IN THIS CASE WAS IMPROPER AND DEFENDANT WAS DEPRIVED A FAIR TRIAL. THIS COURT INDICATED THAT IF THERE WAS EVIDENCE OF A BURGLARY, THE TRIAL WOULD HAVE BEEN DELAYED. THIS FACT ALONE DEMONSTRATES THE PREJUDICE TO THE DEFENSE BY THE PROSECUTORS' CONDUCT.

RESPECTFULLY SUBMITTED

Monty O. Jordan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ATTACHED MOTION FOR NEW TRIAL BASED ON PROSECUTORIAL MISCONDUCT WAS SENT ON THIS 5th DAY OF JANUARY 2021 TO THE U.S. ATTORNEY'S OFFICE AT 310 FIRST STREET SW ROOM 906, ROANOKE, VIRGINIA 24008.

Monty O. Jordan

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06 JAN 2021 PM 8 L



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